

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

EPA Region 5 Records Ctr.



275665

THE DOW CHEMICAL CO., <u>et al.</u> ,)	
)	
Plaintiffs,	)	Civil Action Nos.
	)	C-1-97-0207; C-1-97-0308; C-1-01-439
v.	)	(Consolidated Actions)
)	
ACME WRECKING CO., INC., <u>et al.</u>,	)	Judge Weber
)	
Defendants.)	
)	
THE DOW CHEMICAL CO., <u>et al.</u>,	)	UNITED STATES'
	)	RESPONSES TO DEFENDANT
Plaintiffs,	)	CLARKE SERVICES, INC.'S
	)	FIRST SET OF
v.	)	INTERROGATORIES, REQUESTS
	)	FOR PRODUCTION OF
SUN OIL COMPANY, d/b/a SUNOCO OIL	)	DOCUMENTS, AND REQUESTS
CORP., <u>et al.</u>,	)	FOR ADMISSIONS
)	
Defendants.)	
)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
AERONCA, INC., <u>et al.</u> ,)	
)	
Defendants.)	
)	

Plaintiff United States of America ("United States") responds to the first set of interrogatories, requests for production of documents and requests for admissions of Defendant Clarke Services, Inc. ("Clarke Services") as follows.

GENERAL OBJECTIONS

A. The United States objects to Clarke Services' discovery requests to the extent that they are overly broad and unduly burdensome. The United States further objects to Clarke Services' discovery to the extent that it asks for information that is neither relevant to the subject matter involved in the pending action nor reasonably calculated to lead to the discovery of admissible evidence.

B. The United States objects to Clarke Services' discovery requests to the extent that the information sought is already in the public domain, or is in possession of Clarke Services, or is readily obtainable by Clarke Services from another source in a more convenient, less burdensome, and less expensive manner.

C. The United States objects to Clarke Services' discovery to the extent that it seeks documents that are protected by the attorney-client privilege, work-product doctrine, joint defense privilege, environmental audit privilege, or any other privilege.

D. Where the United States provides the name of a person in response to a discovery request, the person may be contacted through undersigned counsel for the United States, unless an address for the person is given in response to the request or the response states that the address is unknown.

E. The United States objects to the instructions to Clarke Services' discovery to the extent that they purport to require the United States to provide exhaustive information regarding the privileged nature of any documents, information or objects requested by any Interrogatory or Request for Production. The United States will produce a privilege log of any such documents, information or objects at a mutually convenient time in the litigation.

F. The United States' substantive responses are provided subject to all of the preceding objections and interpretations, as well as the specific objections made below, and by providing substantive responses, the United States does not intend to waive any general or specific objection. Without undertaking any obligation to do so, the United States reserves the right to supplement these responses to this and all discovery in the event that additional information is made known or becomes available to them.

G. Much of the information sought in this discovery may be contained in the responses to U.S. EPA's CERCLA Section 104(e) requests for information filed by various recipients relating to the property which is the subject of the United States' complaint, including the responses filed by Clarke Services. The United States directs Clarke Services to these CERCLA Section 104(e) responses in addition to providing the following information.

RESPONSES

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1:

Produce all documents upon which plaintiffs rely in support of the allegation that Clarke Services, Inc. arranged for disposal of hazardous substances at the Site. For purposes of this and subsequent discovery requests, "Site" shall mean the Skinner Landfill Superfund Site in West Chester, Ohio, and referred to as the "Site" in plaintiffs' Amended Complaints.

RESPONSE:

Subject to continuing discovery, the United States will make the documents requested available by providing copies to Clark Services at a time mutually agreed to by counsel for the parties.

INTERROGATORY NO. 1:

List by common name all hazardous substances that plaintiffs contend that Clarke Services, Inc. arranged for disposal at the Site.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection and subject to continuing discovery, the United States states that Clark Services transported and arranged for the disposal of materials containing hazardous substances to the Site including but not limited to hazardous substances found in construction and demolition debris and commercial, industrial and municipal waste. Additionally, Clarke Services is the successor to the liability of Clarke Sanitary Fill and Clarke's Complete Collection. In the 1960s, one or both of these companies disposed of and/or transported cyanide ash and industrial waste to the Site.

INTERROGATORY NO. 2:

Separately state for each hazardous substance listed in response to Interrogatory No. 1 the detailed factual basis upon which plaintiffs base their allegation that the substance was disposed of at the site by arrangement of Clarke Services, Inc.

RESPONSE:

The United States objects to this request to the extent that it calls for the premature disclosure of facts known and opinions held by experts. Expert reports are not required to be disclosed by the parties until September 6, 2002, after the completion of fact discovery. Without waiving this objection, and subject to continuing discovery, the factual bases for the United States' response to Interrogatory No. 1 is set forth in various documents. Those documents will be made available in response to Request for Production of Documents No. 1.

INTERROGATORY NO. 3:

List each and every date that you contend Clarke Services, Inc. arranged for disposal of hazardous substances at the Site.

RESPONSE:

Subject to continuing discovery, the United States states that documents indicating some of the dates that Clarke Services, Inc., Clarke Sanitary Fill, and Clarke's Complete Collection transported or arranged for the disposal of hazardous substances at the Site will be made available to Clarke Services, Inc. in response to Request for Production of Documents No. 1.

INTERROGATORY NO. 4:

For each date you list in response to Interrogatory No. 3, list the quantity of each specific hazardous substance you contend Clarke Services, Inc. arranged for disposal at the Site.

RESPONSE:

The United States objects to this interrogatory because it is not reasonably calculated to lead to the discovery of admissible evidence. Under the law applicable to the United States' cost recovery claim, the quantity of hazardous substances that a defendant sends to a site is not a defense to joint and several liability. Without waiving this objection and subject to continuing discovery, documents and testimony within documents produced in response to Request for Production of Documents No. 1 provide some indication of the quantity of material that Clarke Services and its predecessors, Clarke Sanitary Fill and Clarke's Complete Collection, disposed of at the Site.

INTERROGATORY NO. 5:

List all documents that were prepared as part of the investigation, risk assessment, choice of the remedy, and design of the remedy for the Site, including but not limited to, the remedial investigation/feasibility study, risk assessments, record of decision, remedial design, and any other document containing information on hazardous substances located at or migrating from the Site, the risks posed by the Site, alternative remedies evaluated for the Site, selection of the remedy for the Site, and design of the remedy. For each such documents, provide the title, author, date of issuance, and document number (if any).

RESPONSE:

The United States objects to this interrogatory because the documents sought by Clarke Services are publicly available, easily accessible by Clarke Services through the local Site document repository established by U.S. EPA, and requiring the United States to answer this request will subject it to undue burden. Without waiving these objections, the United States will make the documents requested available for inspection and copying by Clarke Services at a location and time to be mutually agreed upon by counsel for the parties.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2:

Produce a copy of all documents listed in response to Interrogatory No. 5.

RESPONSE:

See response to Interrogatory No. 5 above.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3:

Produce a copy of all Consent Decrees entered into by the United States and potentially responsible parties pertaining to the Site, including, but not limited to, the Consent Decree entered by the Court on April 3, 2001 in United States v. Skinner-Morgan, No. C-1-00-424 (S.D. Ohio).

RESPONSE:

The United States object to this discovery request because the documents requested are publicly available through the United States District Court for the Southern District of Ohio. Notwithstanding this objection, the United States will make the documents requested available for inspection and copying by Clarke Services at a location and time to be mutually agreed upon by counsel for the parties.

REQUEST FOR ADMISSION NO. 1:

Admit that the Site was proposed for inclusion on the National Priorities List on December 30, 1982.

RESPONSE:

The United States admits Request for Admission No. 1.

INTERROGATORY NO. 6:

If the response to Request for Admission No. 1 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See Response to Request for Admission No. 1.

INTERROGATORY NO. 7:

If the response to Request for Admission No. 2 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

See response to Request for Admission No. 2., as set forth below.

REQUEST FOR ADMISSION NO. 2:

Admit that Clarke Services, Inc. did not deliver any waste at the Site prior to 1988.

RESPONSE:

The United States denies Request for Admission No. 2.

INTERROGATORY NO. 8:

If the response to Request for Admission No. 2 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

Documents and testimony within documents provided in response to Request for Production No. 1 show that Clarke Services disposed of and/or transported waste to the Site prior to 1988. Furthermore, Clarke Services succeeded to the liability of Clarke Sanitary Fill and Clarke's Complete Collection, and Clarke Sanitary Fill and Clarke's Complete Collection disposed of and/or transported waste to the Site in the 1960s.

REQUEST FOR ADMISSION NO. 3:

Admit that Clarke Services, Inc. did not deliver any waste at the Site after 1989.

RESPONSE:

The United States can neither admit nor deny this request for lack of knowledge.

INTERROGATORY NO. 9:

If the response to Request for Admission No. 3 is a full or partial denial, state each and every fact known to you on which you base your denial.

RESPONSE:

The United States is aware that Clarke Services allegedly dissolved as a corporation in 1984. However, documents and testimony within documents provided in response to Request for Production No. 1 show that Clarke Services was listed as a customer of Skinner Landfill on documents dated after Clarke Services' alleged dissolution in 1984.

Additionally, documents and testimony within documents provided in response to Request for Production No. 1 show that Dick Clarke continued to utilize the Site after 1989. While it appears that Mr. Clarke's utilization of the Site after 1989 was done under the name of Dick Clarke Company and Clarke, Inc., the United States lacks knowledge to state that

Clarke Services, Inc. did not utilize the Site after 1989. Moreover, the Dick Clarke Company and Clarke, Inc. could be the successors to the liability of Clarke Services, Inc.

INTERROGATORY NO. 10:

Identify with reference to each numbered discovery request all persons who assisted in the preparation of the response to the request and the compilation and production of requested documents. For each such person, provide his or her name, title, employer, business address, and business telephone number.

RESPONSE:

Scott Hansen, Remedial Project Manager, U.S. EPA Region 5 (Interrogatory 5, 6, and 7; Request for Admission 1)

Craig Melodia, Associate Regional Counsel, U.S. EPA Region 5 (all)

Deloris Johnson, Paralegal, U.S. EPA Region 5 (compilation and production of documents)

Annette Lang, Trial Attorney, U.S. Dept. of Justice (all)

Michael J. O'Callaghan, Shumaker, Loop & Kendrick, LLP (all)

**THE FOLLOWING DISCOVERY REQUESTS ARE DIRECTED TO ALL
PLAINTIFFS IN THE CONSOLIDATED ACTIONS EXCEPT
THE UNITED STATES. SUCH PLAINTIFFS
REFERRED TO BELOW AS "THE CONTRIBUTION PLAINTIFFS."**

INTERROGATORY NO. 11:

State the total amount of money that the contribution plaintiffs estimate will be spent in "response costs" and "other expenses," as those phrases are used in the contribution plaintiffs' Second Amended Complaint, including recoverable response costs incurred by the United States and the State of Ohio.

RESPONSE:

Not applicable.

INTERROGATORY NO. 12:

State the amount of money that represents the contribution plaintiffs' collective equitable share of the total "response costs" and "other expenses" as stated in response to the preceding interrogatory, and state the facts and reasoning upon which contribution plaintiffs conclude that the amount represents the contribution plaintiffs' collective equitable share.

RESPONSE:

Not applicable.

INTERROGATORY NO. 13:

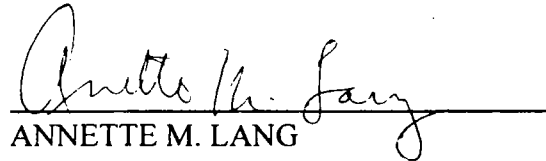
State the amount of money that the contribution plaintiffs have presently collectively spent in "response costs" and "other expenses."

RESPONSE:

Not applicable.

Respectfully submitted,

W. Benjamin Fisherow
Deputy Section Chief
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February 2002, I caused a true copy of the foregoing UNITED STATES' RESPONSES TO DEFENDANT CLARKE SERVICE'S INC. FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR ADMISSIONS to be served by first-class mail, postage prepaid upon the following counsel of record:

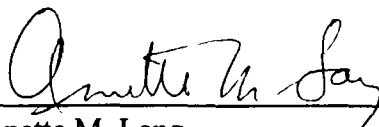
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